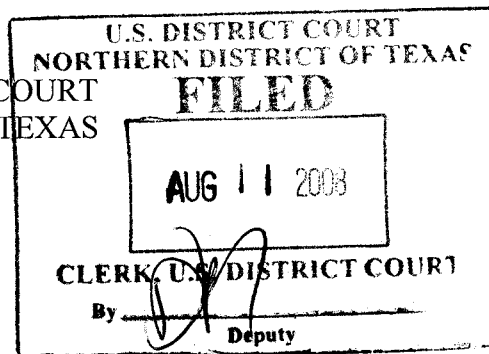


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



D. RONALD RENEKER, SPECIAL RECEIVER FOR
AMERIFIRST FUNDING, INC. aka AMERI-FIRST
FUNDING, INC. aka AMERI FIRST FUNDING,
INC., AMERIFIRST ACCEPTANCE CORP.,
JEFFREY C. BRUTEYN, DENNIS W. BOWDEN,
AMERICAN EAGLE ACCEPTANCE CORP.,
HESS FINANCIAL CORP., INTERFINANCIAL
HOLDINGS CORP., HESS INTERNATIONAL
PROPERTIES, LLC, HESS INTERNATIONAL
INVESTMENTS, S.A., UNITED FINANCIAL
MARKETS, INC. AND GERALD KINGSTON,

Plaintiffs

vs.

PHILLIP W. OFFILL, JR. AND GODWIN PAPPAS
RONQUILLO, LLP,

Defendants

Civil Action No. _____

JURY DEMANDED

3:08 CV 1394 - M

24241

COMPLAINT

TO THE HONORABLE COURT:

Plaintiff D. Ronald Reneker, in his capacity as Special Receiver for Defendants AmeriFirst Funding, Inc. aka Ameri-First Funding, Inc. aka AmeriFirst Funding, Inc., AmeriFirst Acceptance Corp., Jeffrey C. Bruteyn, Dennis W. Bowden, and Relief Defendants American Eagle Acceptance Corp., Hess Financial Corp., InterFinancial Holdings Corp., Hess International Properties, LLC, Hess International Investments, S.A., United Financial Markets, Inc. and Gerald Kingston (hereinafter "Special Receiver"), complains of Defendants Phillip W. Offill and Godwin Pappas Ronquillo, LLP and alleges the following:

PARTIES

1. Plaintiff Special Receiver is the Court-appointed Special Receiver in Civil Action No. 3:07-CV-1188-D.

2. Defendant Phillip W. Offill, Jr. ("Offill") is an individual residing in Collin County, Texas. Offill may be served with process at 2610 Allen Street, Dallas, Texas 75204.

3. Defendant Godwin Pappas Ronquillo, LLP, f/k/a Godwin Pappas Langley Ronquillo, LLP f/k/a Godwin Gruber, LLP ("Godwin Pappas") is a Texas limited liability partnership. Godwin Pappas may be served with process by serving its registered agent, Thomas S. Hoekstra, at 1201 Elm Street, Suite 1700, Dallas, Texas 75270.

JURISDICTION AND VENUE

4. On July 2, 2007, in Civil Action No. 3:07-CV-1188-D, this Court entered an Order Appointing Temporary Receiver (the "Original Receivership Order") pursuant to which the Court, among other things, took exclusive jurisdiction and possession of the "assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated" (hereinafter "Receivership Assets") then belonging to the Amerifirst Funding, Inc., AmeriFirst Acceptance Corp., Jeffrey C. Bruteyn, Dennis W. Bowden, American Eagle Acceptance Corporation, and Hess Financial Corp., and appointed William D. Brown as Receiver for the Receivership Assets. On August 2, 2007, this Court entered an Amended Order Appointing Temporary Receiver (the "Amended Receivership Order"), which, among others, added InterFinancial Holdings Corp., Hess International Properties, LLC, Hess International Investments, S.A., United Financial Markets, Inc. and Gerald Kingston as additional relief defendants.

5. In paragraph 3 of both the Receivership Order and the Amended Receivership Order, all defendants and relief defendants in Cause Number 3:07-CV-1188-D, as well as all persons in active concert or participation with such defendants or relief defendants who received actual notice of the orders, were directed to “promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them ... [with] [n]o separate subpoena ... required.”

6. This Court has exclusive jurisdiction over the Receivership Assets, and the Amended Receivership Order provides that any action to determine disputes relating to Receivership Assets or whether an asset is an asset of the Receivership shall be filed in this Court. The claims asserted in this action are Receivership Assets.

7. On June 5, 2008, this Court entered an Order (so styled) in which the Court appoint D. Ronald Reneker as Special Receiver to evaluate and prosecute any claims of the Receivership against Offill and Godwin Pappas.

FACTUAL BACKGROUND

8. At all times material hereto, Offill was an attorney licensed to practice law in the State of Texas, and Godwin Pappas was a law firm. Offill was a partner with Godwin Pappas from the date of its formation until January 2007 and at all relevant times was acting on behalf of himself and Godwin Pappas with respect to the matters that are the subject of this action. During that period, Offill and other attorneys at Godwin Pappas working under Offill’s direction (collectively the “Other Godwin Pappas Attorneys”), acting on behalf of Godwin Pappas, provided legal representation to Jeffrey Bruteyn (“Bruteyn”), Amerifirst Acceptance Corporation (“Amerifirst Acceptance”), Amerifirst Funding, Inc. (“Amerifirst Funding”), and American Eagle Acceptance Corporation (“American Eagle,” and collectively with Bruteyn, Amerifirst

Acceptance, and Amerifirst Funding, the “Amerifirst Clients”). Among other things, in the course of their representation of the Amerifirst Clients, Offill and/or the Other Godwin Pappas Attorneys incorporated Amerifirst Acceptance in February 2006, and prepared the Certificate of Formation, Bylaws, and Organizational Resolutions.

9. Also in connection with their representation of the Amerifirst Clients, Offill and the Other Godwin Pappas Attorneys prepared various documents with the goal of enabling Amerifirst Acceptance and Amerifirst Funding to offer securities for sale to the public. These documents included forms of a Servicing Agreement, a Sale and Servicing Agreement, a Term Sheet, a Subsequent Transfer Agreement, a Subscription Agreement, a Suitability Questionnaire, a Security Agreement and a Promissory Note. On information and belief, these documents were delivered to Bruteyn on or about February 28, 2006.

10. Thereafter, in March 2006, Offill and the Other Godwin Pappas Attorneys continued to prepare additional offering documents for Amerifirst Acceptance, including a Model Accredited Investor Exemption Uniform Notice of Transaction.

11. At no time, however, did Amerifirst Acceptance or Amerifirst Funding use the offering documents prepared by Offill and/or the Other Godwin Pappas Attorneys. Instead, both Amerifirst Acceptance and Amerifirst Funding offered for sale to the public what they termed “Collateral Secured Debt Obligation Notes” (the “CSDOs”). The CSDOs were offered on an interstate basis on a Web page known as “www.Amerifirstcorp.com” and were accompanied by false representations, including the representation that the CSDOs were secured by collateral. In doing so, Amerifirst Acceptance and Amerifirst Funding violated registration and anti-fraud provisions of numerous state and federal securities laws.

12. In early August 2006, the illegal offering of the CDSOs had come to the attention of the Texas State Securities Board ("TSSB"), and Bruteyn and his affiliated entities received an initial verbal inquiry from the TSSB. On August 14, 2006, the initial inquiry was followed by a formal written inquiry requesting information about the offering of the CDSOs and a response within ten (10) days.

13. The Amerifirst Clients engaged Offill and Godwin Pappas to respond to the TSSB inquiry. On September 11, 2006, Offill did so on behalf of Bruteyn, Amerifirst Funding, and American Eagle. In the response, Offill negligently misrepresented to the TSSB that:

- the CDSOs were secured by pledges of vendor's liens on automobile purchase notes, automobiles, certificates of deposit, and cash;
- the Amerifirst Clients had not utilized promotional materials or advertising;
- the CDSOs were offered to Texas residents only through AmeriFirst Funding's officers and directors, none of whom were paid any manner of additional compensation;
- Colonial First Advisors was the investment advisor for the CDSO offering, and it was located at 4514 Cole Ave, Suite 600, Highland Park, Texas 75202;
- the Amerifirst Clients had not offered or sold any securities through any internet site; and
- Amerifirst Funding had \$23.5 million in assets.

14. At the time Offill made these statements to the TSSB, Offill and Godwin Pappas either knew or should have known that these statements were false. Specifically, they knew or should have known that:

- the CDSOs were unsecured;

- the Amerifirst Clients were distributing sales materials that had been authorized by one or more of the Amerifirst Clients;
- commissions were being paid to various companies and individuals who sold the CDSOs;
- advertising was taking place on the internet;
- Colonial First Advisors was located in Florida, not Texas; and
- 240 persons or entities had invested in the CDSOs, 140 in Texas and 100 in Florida.

15. Among other things, Offill's and Godwin Pappas' actual or constructive knowledge that the representations made to the TSSB were false is demonstrated through a comparison of the statements Offill made to the TSSB and the statements Offill made to counsel for Lloyds of London ("Lloyd") in a letter dated November 30, 2006. Among other things, in the letter to Lloyds, Offill represented that Amerifirst Funding:

- had sold CSDOs in both Texas and Florida;
- had assets in excess of \$40 million; and
- did have "authorized sales materials."

16. Moreover, as of November 2006, Offill was aware that the Florida State Securities Board was making inquiries as to the activities of the Amerifirst Clients regarding the CDSO offering. Thus, at least as of that point, Offill and Godwin Pappas either knew or should have known that the Amerifirst Clients were not entitled to rely upon any intrastate exemption from state and federal securities laws which regulate public offerings of securities, and that Offill's statement to the TSSB that securities were sold only in Texas was false.

17. At all relevant times, once on notice that their clients were committing illegal and/or fraudulent acts, Offill's and Godwin Pappas' duty was to promptly make reasonable

efforts to dissuade the Amerifirst Clients from further committing such acts, and if they continued, to reveal their misconduct to the proper authorities to the extent necessary to prevent the Amerifirst Clients from committing additional criminal and/or fraudulent acts.

18. Despite this duty, Offill and Godwin Pappas gave the TSSB false information that forestalled the TSSB investigation, thus allowing the Amerifirst Clients to continue their illegal and/or fraudulent activity; failed to adequately advise the Amerifirst Clients that they were violating the law and that they should cease illegally offering securities to the public; and failed to take the action necessary to protect the public and the Amerifirst Clients when such conduct continued. Each such course of conduct was negligence.

19. Moreover, Offill and Godwin Pappas had an attorney-client relationship with the Amerifirst Clients. As such, Offill and Godwin Pappas owed a fiduciary duty to the Amerifirst Clients. Such duty required Offill and Godwin Pappas to act with abundant good faith, perfect candor, openness, and honesty, without concealment or deception. Offill and Godwin Pappas were also required to make a full and fair disclosure of the facts material to the clients' representation. Offill and Godwin Pappas breached their fiduciary duty to the Amerifirst Clients by engaging in the conduct described in paragraph 18 above.

20. As a result of Offill's and Godwin Pappas' negligence and breaches of fiduciary duty, the Amerifirst Clients were able to continue their illegal sales of the CSDOs after Offill's September 11, 2006, letter to the TSSB, thereby rendering the Amerifirst Clients liable to third party investors in the sum of at least \$36.5 million.

21. This action is brought within two years of the date that the wrongful acts committed by Defendants were discovered.

CAUSES OF ACTION

Negligence

22. Special Receiver incorporates by reference, as if fully set forth, the allegations contained in the foregoing Paragraphs 1-21.

23. Offill and Godwin Pappas were negligent in the performance of their legal services for the Amerifirst Clients. The negligence of Offill and Godwin Pappas was a proximate cause of damages to the Amerifirst Clients. The damages are measured by the difference between the amount owed to the investors by the Amerifirst Clients and the amount of any investor recovery from the assets of the Receivership Estate.

Breach of Fiduciary Duty

24. Special Receiver incorporates by reference, as if fully set forth, the allegations contained in the foregoing Paragraphs 1-21.

25. Offill and Godwin Pappas breached their fiduciary duty to the Amerifirst Clients by failing to act with abundant good faith, perfect candor, openness, and honesty; without concealment or deception; and without making full and fair disclosure of all material facts. Offill's and Godwin Pappas' breach of fiduciary duty was a proximate cause of damages to the Amerifirst Clients. The damages are measured by the difference between the amount owed to the investors by the Amerifirst Clients and the amount of any investor recovery from the assets of the Receivership Estate. In addition to all monetary damages that are recoverable, Special Receiver is also entitled to recover any and all fees paid by the Amerifirst Clients to Offill and Godwin Pappas by the Amerifirst Clients in connection with the matters that are the subject of this action, because forfeiture of fees is warranted in a breach of fiduciary duty action.

Jury Demand

26. Special Receiver demands trial by jury of all issues so triable.

PRAYER

WHEREFORE, Plaintiff Special Receiver D. Ronald Reneker prays that Defendants Phillip W. Offill, Jr. and Godwin Pappas Ronquillo, LLP be cited to appear and answer in this action and that upon final hearing,

- (1) Plaintiff recover from Defendants, jointly and severally, monetary damages as described herein and all fees paid by the Amerifirst Clients to Defendants in connection with the matters that are the subject of this action;
- (2) Plaintiff recover from Defendants, jointly and severally, pre- judgment and post-judgment interest as allowed by law;
- (3) Plaintiff recover from Defendants, jointly and severally, costs of court; and
- (3) Plaintiff recover from Defendants, jointly and severally, such other and further relief, whether special or general, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted:

By: 

D. Ronald Reneker, Special Receiver
Texas Bar No.: 16770000

3800 Lincoln Plaza
500 N. Akard Street
Dallas, Texas 775201
(214) 855-7564
(214) 978-4384 (fax)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

D. Ronald Reneker, in his capacity as Special Receiver for Defendants AmeriFirst Funding, Inc., et al.

(b) County of Residence of First Listed Plaintiff Dallas County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Munsch Hardt Kopf & Harr PC, 3800 Lincoln Plaza, 500 N. Akard Street, Dallas, Texas 75201-6659, 214-855-7500

DEFENDANTS

Phillip W. Offill, Jr. and Godwin Pappas Ronquillo, LLP

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases ONLY, U.S. DISTRICT OF TEXAS) (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Suit by federal receiver to pursue receivership estate's claims for professional negligence and breach of fiduciary duty

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Excess of \$1M

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Sidney A. Fitzwater

DOCKET NUMBER 3:07-cv-01188-D

DATE

08/11/2008

SIGNATURE OF ATTORNEY OF RECORD

D. Ronald Reneker

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____